

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 17.03.2010**

**CORAM:**

**THE HON<sup>BLE</sup> MR. JUSTICE K.CHANDRU**

**W.P.Nos.23618 and 23619 of 2009**

**& M.P.Nos.1 and 2 of 2009**

**1 VIVEKANANDA ROCK MEMORIAL**

**AND VIVEKANANDA KENDRA REP BY VICE PRESIDENT**

**A. BALAKRISHNAN VIVEKANANDAPURAM**

**KANYAKUMARI.**

**.. PETITIONER in both W.Ps.**

**Vs**

**1 THE STATE INFORMATION COMMISSIONER**

**TAMILNADU INFORMATION COMMISSION**

**KAMADENU SUPER MARKET**

**1ST FLOOR, NEW DOOR NO.378**

**ANNA SALAI, TEYNAMPET**

**CHENNAI 18.**

**.. 1ST RESPONDENT in both W.Ps.**

**2 ERA. BASKARAN .. 2nd RESPONDENT in W.P.23618/2009**

**2 ERA BHAGAVATHY .. 2nd RESPONDENT in W.P.23619/2009**

**Prayer :     Petitions under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the respondent No.1 made in Case No.4746/enquiry/2009 and No.4747/enquiry/2009 order dated 19.9.2009 confirming the order dated 11.6.2009 and quash the same.**

**For Petitioner     :: Mr.R.Shankaranarayanan**

**For Respondents    :: Mr.G.Arokiamani for**

**M/s.Pass Associates**

### **COMMON ORDER**

Both the matters arise out of the order passed by the State Information Commission dated 11.6.2009 confirmed by order dated 19.9.2009 in Case Nos.4746 and 4747 of 2009.

2.     In both the Writ Petitions, the respective 2nd respondents sought for certain information from the petitioner Vivekananda Rock Memorial and Vivekananda Kendra. After exchange of certain pleadings and procedures, the order dated 11.6.2009 came to be passed. In the order signed by the Commission's Registrar on 11.6.2009, it was stated that while the petitioner contended that the Right to Information Act will not apply to their association, the contesting respondents sought to justify that the petitioner is receiving funds from the State. Since the petitioner wanted an adjournment, the matter was adjourned to 24.6.2009 with cost of Rs.5,000/-. Subsequently, on the adjourned day, an order dated 24.6.2009 came to be passed.

3.     In the order dated 24.6.2009, the Commission found that both the parties were not present. But, however, it held as follows:

"However the board was given time for any proper written argument to the contrary by 5 p.m on 27.5.2009 failing which they must told that the order will be made absolute. But only a fax was received asking for three weeks time and hence the case was posted for re-enquiry today. Neither party is present to-day and since

the petitioners have already established their case and the Public Authority had not countered it despite the Board being given adequate chance and on the face of the evidence produced by the petitioner, the Commission makes its observation that the counter proposition by the Public Authority is not valid and they squarely fall under the definition of Section 2(h)(d)(ii) of the Act and direct that they should supply the information asked for within two weeks of this order failing which they would be liable for all the penalties as prescribed under the Act."

4. Aggrieved by both orders, the petitioner organization filed both the Writ Petitions. The contentions raised were that they were not given any opportunity to establish that they are not public authority within the meaning of Section 2(h)(d)(ii) of the Right to Information Act. They have ample materials to show that though they are not Governmental Organisation, they are not substantially financed. The Act does not indicate anywhere as to what is the exact meaning of the words "substantially financed". Whenever such notices are brought before this Court after final orders are passed by the Commission, this Court gave finding on such issues depending upon the materials available with the Commission and the order passed by the Commission in this regard.

5. In the present case, as found from the impugned order, the Commission did not give any specific finding except by saying that adequate chances were given for producing records and since that was not done, it was found that the petitioner organisation is a public authority within the meaning of Section 2(h)(d)(ii) of the Act. If an application of the Right to Information Act is sought to be made, on the basis of assertion of one party and the denial by the other party there must be a finding that the petitioner organisation was substantially financed either directly or indirectly by the funds provided by the appropriate Government. Therefore, the Commission will have to go into the details of the organisation in rendering a finding. It goes without saying that such a finding cannot be rendered by a one line order.

6. It was seriously contended by the petitioner before the Commission that they are not only covered by Section 2(h)(d)(ii) of the Act, but also the information sought for is protected under section 8 of the Act. Therefore, necessarily the parties will have to lead appropriate evidence and convince the authority either about the applicability or about the non-applicability of the Right to Information Act. In the light of the above, this Court is of the view that the petitioner must be given an opportunity to put forth their stand point including producing the necessary

materials for convincing the Commission that they are not covered by the Act. Though before this Court voluminous records are produced for the purpose of establishing that they are not substantially financed either directly or indirectly funded by the Government, the learned counsel for the 2nd respondent contended that even with the availability of such materials, this Court can render a finding so as to avoid future litigation. This Court is unable to accede to the request made by the 2nd respondent solely on the ground that judicial review over orders of the Information Commission will be available only when the Commission passes a speaking order and thereafter there is time enough to review the order in the nature of Certiorari and not otherwise.

7. If the statutory authority fails to consider the relevant aspect or misdirect itself on a question of law may be the circumstances by which a Writ in the nature of Certiorari can be entertained. But, in the present case the authority merely because the petitioner was absent came to the conclusion that the petitioner Organisation is covered under section 2(h)(d)(ii) of the Act. For arriving at that conclusion, no records were referred to. Even the statement made by the 2nd respondent were not referred to in the impugned orders.

8. Therefore, in the absence of the finding rendered by Commission not backed by relevant records and pleadings, this Court is obliged to set aside the order passed by the Commission dated 19.9.2009. The matter in Case Nos.4746 and 4747 of 2009 stands remitted back to the 1st respondent Information Commission for a fresh disposal. Both the parties are given liberty to file proper records and pleadings to arrive at a proper conclusion. However, this Court is not inclined to interfere with the costs ordered by the Commission by the impugned order dated 11.6.2009 which will be a pre-requisite condition for proceeding with the case. Therefore, the petitioner shall pay cost to the 2nd respondent as ordered by the Commission as found in the impugned order dated 11.6.2009. Both the Writ Petitions are disposed of accordingly. No costs. The connected Miscellaneous Petitions stand closed.

17.03.2010

Index:Yes

Internet:Yes

ajr

To

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